

REMARKS

In response to the Office Action mailed October 16, 2007, Applicant respectfully requests reconsideration. Claims 1, 10, 23, 30-34, 76, 122, 129, 142, 149-153, 183, 184 and 226-246 were previously pending in this application. Claims 2-9, 11-22, 35-75, 77, 81, 85-97, 114-121, 123-128, 130-141, 143-148, 154-182, 185, 189, 193-211 and 218-225 had previously been withdrawn from consideration. By this amendment, claims 1, 5-8, 10-13, 23, 62, 78-80, 82-84, 98-113, 122, 124-127, 129-132, 142, 149, 186-188, 190-192, 212-217, 236, 237, and 246 have been canceled without prejudice or disclaimer. Claims 30-34, 76, 150-153, 183-184, 226-235 and 238-245 have been amended. New claims 247-264 have been added. As a result, claims 30-34, 76, 150-153, 183, 184 and 226-235, 238-245, and 247-264 are pending for examination with claims 247, 253 and 259 being independent. No new matter has been added.

Examiner Interview Summary

As a preliminary matter, Applicant's representatives thank Examiner Fadok for courtesies extended in granting and conducting a telephone interview on April 9, 2008 to discuss a prior draft of what has become new claim 247 and to ascertain whether such a claim would overcome the outstanding rejections. Applicant understood Examiner Fadok to agree that such a claim would be allowable over the art of record. New claim 247 is only slightly different from the draft claim that was under discussion.

For the record, the participants in the interview, in addition to Examiner Fadok, were the undersigned, Inna Vitol, Robert Antonellis and Steven Antonellis.

Applicant's representatives also thank Examiner Fadok for courtesies extended in granting and conducting a telephone interview on September 19, 2007. The substance of the telephone interview is correctly summarized by the Examiner's interview summary.

Rejections Under 35 U.S.C. §103

The Office Action states on page 2 that it is rejecting claims 76, 183 and 184 under 35 U.S.C. §103(a) as being unpatentable over August, U.S. Publication No. 2002/0143638, ("August") in view of Borton, U.S. Publication No. 2002/0188492, ("Borton"). It then proceeds, however, to

reject claims 1, 122, 236, 10, 129, 23, 30, 149, 31, 150, 32, 151, 33, 152, 34, 153, 226-246 in that order. Accordingly, Applicant understands page 2 to contain an erroneous list of claims. In any event, Applicant respectfully disagrees with the rejection.

During the telephone interview conducted on September 19, 2007 and in the Interview Summary mailed as a continuation of the Office Action, Examiner Fadok indicated that the claims were "rather broad" and that the allowable subject matter may be found in the embodiments of the present specification.

Accordingly, without acceding to the appropriateness of the rejection, Applicant has canceled independent claims 1, 236 and 246, without prejudice or disclaimer. Dependent claims 23, 78-80, 82-84, 98-113, 122, 129, 142, 149, 186-188, 190-192, 212-217 and 237 have been canceled as well. Specifically, dependent claims 10-13, 23, 129-132, 142, 149 and 237, each directed to a communication device, have been canceled as unnecessary because any suitable input device can be used to receive orders and transmit the orders to the at least one computer of the new independent claims. New claims 247-264 have been added, with claim 247 being an independent claim replacing claim 1, to focus on one kind of embodiment, per the Examiner's suggestions. Accordingly, dependent claims 30-34, 76, and 226-230 have been amended to depend from new claim 247. Dependent claims 150-153, 183, 184, and 231-235 have been amended to depend from new claim 253 and dependent claims 238-245 have been amended to depend on new claim 259.

New claim 247 is directed to embodiments of order *delivery* management systems rather than to the more generic "order optimization system" of claim 1, and recites:

- An order delivery management system, comprising:
at least one computer; and
an input device configured to receive orders and transmit the orders to the at least one computer, wherein the at least one computer comprises software which, when executed, performs
- (a) receiving at least one order from the input device,
 - (b) continuously tracking locations of one or more delivery persons and/or one or more vehicles associated with the one or more delivery persons and estimating availability of the one or more delivery persons,
 - (c) evaluating the estimated availability and, in response, determining an optimized utilization of the one or more delivery persons, based on a set of criteria, for a delivery of the at least one order, wherein the determination comprises

matching the at least one order with a delivery person selected in accordance with a current optimized utilization of the one or more delivery persons,

(d) when the optimized utilization differs from an immediately previous optimized utilization of the one or more delivery persons, reassigning the at least one order from a previously selected delivery person to a currently selected delivery person, and

(e) when the at least one order is ready for a delivery, providing at least one notification to the then selected delivery person.

During the telephone interview conducted on April 9, 2008, Examiner Fadok indicated that a claim of the scope of claim 247 would patentably distinguish over the art of record and would be entered under the previously made restriction requirement. The Examiner reserved the right to conduct a further search, of course.

Applicant's rationale for the allowability of such a claim over the art of record may be summarized as follows.

August discusses an order delivery station where *a customer can pick up an order*. (August, pages 1-2, ¶ 0017). (Emphasis added). Nowhere does August even mention delivering orders to customers. In contrast, claim 247 recites “continuously tracking locations of one or more delivery persons and/or one or more vehicles associated with the one or more delivery persons and estimating availability of the one or more delivery persons” and *evaluating the estimated availability and, in response, determining an optimized utilization of the one or more delivery persons*. (Emphasis added). Support for this limitation can be found, for example, on page 43, ¶ 0133, on pages 43-44, ¶ 0137 and on page 45, ¶ 0141, of the present specification. Therefore, August also does not teach or suggest

“evaluating the estimated availability and, in response, determining an optimized utilization of the one or more delivery persons and/or the one or more vehicles, based on a set of criteria, for a delivery of the at least one order, wherein the determination comprises matching the at least one order with a delivery person selected in accordance with a current optimized utilization of the one or more delivery persons,” as recited in claim 247.

Borton is directed to determining the optimal sequence and timing of making, delivery, and carry-out of orders for food. (Borton, page 2, ¶ 0025). The program of Borton is used to strategically organize orders from a backlog of orders into groups or clusters, based on the

compatibility of the orders. (Borton, page 2, ¶ 0027). However, while describing delivering orders to customers, Borton does not teach “continuously tracking locations of one or more delivery persons and/or one or more vehicles associated with the one or more delivery persons and estimating availability of the one or more delivery persons,” as recited in claim 247. Indeed, Borton describes that when a driver is dispatching himself or herself, but before he or she leaves the store, *he or she estimates* how long it will take him or her to return. (Borton, page 4, ¶ 0044). (Emphasis added). Borton’s program calculates the predicted return time of a driver after the driver enters into the system what deliveries he or she is taking and dispatches himself or herself. (Borton, page 4, ¶ 0045). Thus, in Borton, drivers themselves estimate how much time it will take for them to deliver an order or a group of orders. Once a driver leaves, if he or she encounters heavy traffic, no adjustment is made to his/her time estimate. There is, accordingly, no real-time continuous monitoring and no optimization of the use of delivery drivers. In contrast, claim 247 recites continuously tracking locations of a plurality of delivery persons and providing their location information.

Applicant respectfully notes that not only do the claims patentably distinguish over August and Borton, but also they patentably distinguish over the other art of record. In particular, McDonald, Jr. et al., U.S. Publication No. 2002/00777750, (“McDonald”) applied by the Office Action to reject claims 76, 183 and 184 under 35 U.S.C. 103(a), does not cure the deficiencies of August and Borton. McDonald describes a vehicle monitoring system that monitors the state of a plurality of vehicles. (McDonald, page 1, ¶ 0008). McDonald describes a ready-mix concrete application where the vehicle condition sensor generates a mixing barrel status signal indicative of a charge operation condition and a discharge operating condition of a mixing barrel. (McDonald, page 1, ¶ 0011). However, with respect to optimizing utilization of delivery persons, McDonald only mentions that “[i]n the case of ready-mix concrete delivery, for example, extensive and timely automatic status information is required to enable optimal utilization of the delivery fleet.” McDonald does not teach or suggest

evaluating the estimated availability and, in response, determining an optimized utilization of the one or more delivery persons and/or the one or more vehicles, based on a set of criteria, for a delivery of the at least one order, wherein the determination comprises matching the at least one order with a delivery person

selected in accordance with a current optimized utilization of the one or more delivery persons,

when the optimized utilization differs from an immediately previous optimized utilization of the one or more delivery persons, reassigning the at least one order from a previously selected delivery person to a currently selected delivery person,

as recited in claim 247.

In view of the foregoing, claim 247 patentably distinguishes over the cited art.

Claims 30-34, 76, 226-230 and 248-252 depend from claim 247 and are allowable for at least the same reasons.

Consequently, the obviousness rejections are moot and do not apply against claim 247 or its dependent claims. Thus, those rejections should be withdrawn.

New dependent claims 248, 254 and 260 that depend from independent claims 247, 253 and 259, respectively, recite "continuously tracking status of the orders and estimating order completion times, wherein the estimated order completion times are used in matching the at least one order with the delivery person." Support for these limitations can be found, for example, on page 24, ¶ 0071 of the present specification.

New independent claims 253 and 259 also patentably distinguish over the cited art for reasons that should be clear from the above discussion in connection with claim 247. Specifically, August, Borton and McDonald do not teach or suggest

"continuously tracking locations of one or more delivery persons and/or one or more vehicles associated with the one or more delivery persons and estimating availability of the one or more delivery persons;

evaluating the estimated availability and, in response, determining an optimized utilization of the one or more delivery persons, based on a set of criteria, for a delivery of the at least one order using at least the estimated availability, wherein the determination comprises matching the at least one order with a delivery person selected in accordance with a current optimized utilization of the one or more delivery persons,"

as recited in each of claims 253 and 259.

Therefore, claims 253 and 259 patentably distinguish over August, Borton and McDonald, either alone or in combination.

Claims 150-153, 183, 184, 231-235 and 254-258 depend from claim 253 and are therefore patentable at least based on their dependency. Claims 237, 238-245 and 260-264 depend from claim 259 and are therefore patentable at least based on their dependency.


CONCLUSION

A Notice of Allowance is therefore respectfully requested. The Examiner is requested to call the undersigned at the telephone number listed below if this communication does not place the case in condition for allowance.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicant hereby requests any necessary extension of time. If there is a fee occasioned by this response, including an extension fee, that is not covered by an enclosed check, please charge any deficiency to Deposit Account No. 23/2825.

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Respectfully submitted,

By 
Steve J. Henry
Registration No.: 27,900
WOLF, GREENFIELD & SACKS, P.C.
Federal Reserve Plaza
600 Atlantic Avenue
Boston, Massachusetts 02210-2206
(617) 646-8000